

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, FEBRUARY 13, 2007**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Ben Gabriel, Panel Vice-Chair, Jordan Schweitzer, regular member, Scott Griggs, regular member and Johnny Jefferson, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Ben Gabriel, Panel Vice-Chair, Jordan Schweitzer, regular member, Scott Griggs, regular member and Johnny Jefferson, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer, and Trena Law, Board Secretary

10:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 13, 2007** docket.

1:00 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A January 16, 2007 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2007

MOTION: Griggs

I move to **approve** the Board of Adjustment Panel A January 16, 2007 public hearing minutes.

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 056-235

REQUEST: To waive the two year limitation on special exceptions for fence height and visibility obstruction regulations that were granted with conditions by Board of Adjustment Panel A on November 14, 2006

LOCATION: 5031 Deloache Avenue

APPLICANT: Haverfield Custom Homes, represented by Rob Baldwin

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION:

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to board action:
 - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
 - If the board renders a final decision of denial without prejudice, the two year limitation is waived.
 - The applicant may apply for a waiver of the two year limitation in the following manner:

- The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
- The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outline in the code.
- The applicant's representative seeks a waiver of the two year time limitation on special exceptions to the fence height and visibility obstruction regulations that were granted (subject to compliance with the submitted revised site plan and revised elevation, and that gates must be set 20 feet from the edge of the pavement) by Panel A on November 14, 2006 in order for the Board of Adjustment Panel A. The applicant's representative has not specified in his January 24, 2007 letter (see Attachment A) whether the applicant seeks a waiver on one or both of these special exception requests. The case report for BDA056-235 stated that the special exceptions were made in conjunction with "constructing and maintaining fences located in front yards."

On January 24, 2007, the Board Administrator wrote the applicant's representative a letter that provided details about his request (see Attachment B).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2007

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: Griggs

I move that the Board of Adjustment **deny** the applicant's request to waive the two year limitation on special exceptions for fence height and visibility obstruction regulations that were granted with conditions by Board of Adjustment Panel A on November 14, 2006.

SECONDED: Jefferson

AYES: 2 – Griggs, Jefferson

NAYS: 3 - Richmond, Gabriel, Schweitzer,

MOTION FAILED: 3– 2

MOTION#2: Schweitzer

I move that the Board of Adjustment **grant** the applicant’s request to waive the two year limitation on special exceptions for fence height and visibility obstruction regulations that were granted with conditions by Board of Adjustment Panel A on November 14, 2006.

SECONDED: Gabriel

AYES:3 – Richmond, Gabriel, Schweitzer,

NAYS: 2 - Griggs, Jefferson

MOTION PASSED: 3– 2

FILE NUMBER: BDA 067-031

BUILDING OFFICIAL’S REPORT:

Application of SWC Westmoreland, Ltd., represented by Karl A. Crawley, for a special exception to the sign regulations at 3434 W. Illinois Avenue. This property is more fully described as Lot 6 in City Block A/6115 and is zoned PD-710 which allows one detached sign. The applicant proposes to construct a second detached sign which would require a special exception.

LOCATION: 3434 W. Illinois Avenue.

APPLICANT: SWC Westmoreland, Ltd.
Represented by Karl A. Crawley

REQUEST:

- A special exception to the sign regulations is requested to locate and maintain an additional detached single tenant monument “on-premise sign” on the subject site’s W. Illinois Avenue street frontage. The proposed additional sign is requested in conjunction with developing a movie theater on the subject site which is currently developed as a retail shopping center (Buena Vista Plaza).

STAFF RECOMMENDATION:

Approval, subject to compliance with the submitted revised site plan and revised sign elevation

Rationale:

- The applicant has substantiated how strict compliance with the requirement of the sign regulations (whereby if the applicant were to comply with the sign regulations, the site would only be allowed to have one sign along the site’s primary roadway, W. Illinois Avenue) will result in substantial financial hardship or inequity to the

applicant. In this case, the need for an additional “locator sign” to be erected on Illinois Avenue for the proposed movie theater planned for the subject site is justified since the theater structure is proposed to be located in an area on the site that is not clearly visible from the site’s primary roadway (W. Illinois Avenue) – a location behind the existing shopping center/retail development on the site. The proposed sign along W. Illinois Avenue would be the primary (if not sole) visual cue that a movie theater is located on the subject site since only possibly the tallest portions of the theater structure would be visible from W. Illinois Avenue.

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED SIGN:

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

GENERAL FACTS:

- The Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways.
The applicant submitted a site plan of the subject site with the original application that shows that the subject site has two street frontages: one along W. Illinois and the other along Coombs Creek. The originally submitted site plan denoted “Proposed Sign Location on the subject site’s street frontage along W. Illinois Avenue. Although the application stated that a request has been made to “construct an additional on-premise sign,” no site plan or elevation had been submitted with the original application that denoted the features or location of the existing sign on the site, nor the features of the proposed sign. Two elevations of a monument sign had been submitted with the original application: one elevation denotes a sign that is 20’ high and 10’ wide; the other elevation denotes a sign that is 10’ high and 20’ wide.
- The board administrator conducted a field visit of the subject site and noted a multi-tenant sign on the site. The existing multi-tenant sign on the site is on W. Illinois Avenue and advertises existing retail uses within the center. (But the location of the existing sign was not noted on the originally submitted site plan nor shown on a clearly labeled elevation).
- On January 24, 2007, the Board Administrator emailed the applicant’s representative (see Attachment A). The email encouraged the applicant to submit the following:
 - 1) a site plan that clearly conveyed the location of both the existing and proposed signs on the site;
 - 2) a clearly labeled elevation (or elevations) that showed the features of the proposed sign that the applicant wanted the board to consider;

- 3) a clearly labeled elevation of the features of the existing sign; and
- 4) an explanation as to why the request is being made.
- On January 29, 2007, the applicant submitted additional information to staff regarding the request (see Attachment B). This information included the following:
 - a letter that provided additional details about the request (the additional sign would advertise a movie theater that is proposed to be located on the subject site);
 - a resume of the developer of the site;
 - photos of the other theaters in the area;
 - a sign elevation of the “proposed single tenant sign.” (This elevation indicates a sign that is 20’ high and 10’ wide); and
 - a reduced copy of a scaled site plan that marked the location of the “proposed single tenant sign location” along with the “existing multi-tenant sign” on the site. (The two signs appear to be about 275’ apart on the approximately 300’ of frontage the site has on Illinois Avenue).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 710
North: MF-2(A) (Multifamily)
South: IM (Industrial Manufacturing)
East: IM (Industrial Manufacturing)
West: LI (Light Industrial)

Land Use:

The site is currently developed with as a retail shopping center (Buena Vista Plaza). The area to the north is developed with multifamily uses; and the areas to the east and west are developed with retail uses; and the area to the south appears to be developed with commercial uses.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

Timeline:

Dec. 28, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

- Jan. 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Jan. 19, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the February 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Jan. 24, 2007: The Board Administrator emailed the applicant's representative to request his consideration of submitting additional information to provide clarity to his request (see Attachment A).
- Jan. 26, 2007 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment B).
- Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

STAFF ANALYSIS:

- The subject site has two street frontages (W. Illinois Avenue and Coombs Creek) and is therefore allowed to have one sign per each of these street frontages. This request is made however to allow two signs to be located on the site's W. Illinois Avenue street frontage.
- A sign elevation of the "proposed single tenant sign" has been submitted indicating that the additional proposed sign is 20' high and 10' wide. (A sign elevation of the existing multi-tenant sign has not been submitted).
- A site plan of the overall subject site has been submitted indicating the location of the proposed sign. The proposed sign is shown to be located on W. Illinois Avenue about 275' away from the existing permitted sign on the site. (The site has approximately 300' of frontage on Illinois Avenue).
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having only one sign on W. Illinois Avenue and one sign on Coombs Creek) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- Granting this special exception (with conditions imposed that the applicant complies with the submitted revised site plan and revised sign elevation) would allow a 2nd sign to be located on the site's W. Illinois Avenue frontage, and would assure that the existing and proposed signs are located/maintained as shown of the submitted revised site plan, and that the additional/second sign is constructed/maintained as indicated on the submitted revised sign elevation (a sign that is shown to be 20' high and 10' wide).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Jefferson

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and revised sign elevation is required.

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-037

BUILDING OFFICIAL’S REPORT:

Application of Danielle LoPresti for a variance to the off-street parking regulations at 215 S. Willomet Avenue. This property is more fully described as Lot 14 in City Block 35/3282 and is zoned PD-87 which requires a parking space be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct a structure that provides enclosed parking spaces with a 6 foot setback which would require a variance of 14 feet to the off-street parking regulations.

LOCATION: 215 S. Willomet Avenue

APPLICANT: Danielle LoPresti

REQUEST:

- A variance to the off-street parking regulations of 14’ is requested in conjunction with constructing and maintaining a 2-bay, 3-car detached garage on a site developed with a single family home whereby the enclosed parking spaces in the garage would be less than 20’ from the alley right-of-way line. The subject site is currently developed with a single family home.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted revised site plan dated 1-30-07 is required.
2. An automatic garage door must be installed and maintained in working order at all times.
3. At no time may the area in front of the garage be utilized for parking of vehicles.
4. All applicable permits must be obtained.

Rationale:

- The request parallels a variance request to the off-street parking regulations of 6’ that was granted on the subject site by the Board of Adjustment Panel A in December of 2001: BDA012-109. The December 2001 request was made to construct/maintain a detached two-vehicle garage. (The case returns to the board since an application for a building permit was not applied for within 180 days from

the board's favorable action in 2001, and since the submitted plans have been altered from what was proposed in 2001 from a two-vehicle detached garage to a three-vehicle detached garage in 2007).

- The subject site is encumbered with a 50' lot width and a house (constructed in 1930) of a width that leaves no opportunity as other lots in the zoning district (and on the block) to locate a driveway on either side of the lot to access a detached garage with enclosed parking spaces via Willomet Avenue. (According to the applicant, there is approximately 4' of width on the north side of the lot, and approximately 6' of width left of the south side of the lot). In addition, if the applicant were to locate the proposed enclosed parking spaces 20' from the alley right-of-way line, an existing mature tree that has been noted on the submitted site plan would have to be removed.
- The proposed detached garage structure is in compliance with the front, side and rear yard setback regulations. The only variance need in this case is to the off-street parking regulations, specifically the parking regulation regarding the distance that must be provided between an enclosed parking space (garage door) and a right-of-way line.
- The applicant has obtained approval of the proposed detached garage structure from the City of Dallas Landmark Commission in January of 2007.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS:

- The Dallas Development Code requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley.
The applicant had originally submitted a full site plan indicating an approximate 3.5' distance between the enclosed parking spaces and the alley right-of-way line, and a

partial site plan indicating a 6' distance between the enclosed parking spaces and a line that may be the alley right-of-way line. The board administrator emailed the applicant about this discrepancy and asked for clarification. (Note that the neither plan denotes the alley pavement line). On January 30, 2007, a revised site plan was submitted that indicated a 6' distance between the alley right-of-way line and the enclosed parking spaces of the garage.

- The submitted revised site plan denotes that the proposed detached garage structure is located 6' from the site's rear property line. As a result, the applicant could build the garage structure without garage doors (or enclosed parking spaces) if the board were to deny the variance request. The need for the parking variance is merely to allow the parking spaces in the structure to be enclosed with garage doors.
- The site is flat, rectangular in shape, and 150' x 50' (or 7,500 square feet) in area. The site is zoned PD No. 87. A number of existing trees have been noted on the submitted revised site plan. One existing tree is in a location on the site that would require removal if the garage were to be shifted eastward towards the existing single family home.
- According to DCAD records, the site is developed with a single family home in "good" condition built in 1930 with 1,912 square feet of living area.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachments A, B, and C). This information included the following:
 - A copy of the approved Landmark Commission Certificate of Appropriateness (and related materials);
 - A of materials related to the Board of Adjustment case that was approved on the subject site in 2001;
 - A copy of a current warranty deed of the subject site (which has been placed in the case file and will be available for review upon request);
 - A letter that provides additional details about the request; and
 - Revised site plans.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 87 (Planned Development District)
North: PD No. 87 (Planned Development District)
South: PD No. 87 (Planned Development District)
East: PD No. 87 (Planned Development District)
West: PD No. 87 (Planned Development District)

Land Use:

The subject site is developed a single family home. The areas to the north, east, and west are developed with single family uses, and the area to the south is developed with office uses.

Zoning/BDA History:

- | | |
|--|---|
| 1. BDA 012-109, 215 S. Willomet (the subject site) | On December 11, 2001, the Board of Adjustment Panel A granted a request for a variance to the off-street parking regulations of 6 feet, and imposed the following conditions with this request: 1) compliance with the submitted site plan is required; 2) an automatic garage door must be maintained in working order at all times; at no time may the area in front of the garage be utilized for parking vehicles; and 4) all applicable permits must be obtained. The case report stated that the request was made to construct and maintain an approximately 625 square foot detached garage on a lot developed with a single family home where the applicant proposed to construct/maintain a garage with enclosed parking spaces that would be 6' from the alley right-of-way line. |
| 1. CA067-180, 215 S. Willomet (the subject site) | On January 8, 2007, the Landmark Commission approved a Certificate of Appropriateness with conditions for a new three-car garage with alley access (Rafter tails, novelty siding and windows to match main structure). |

Timeline:

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|----------------|---|
| Dec. 29, 2006: | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| Jan. 19, 2007: | The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case." |

- Jan. 19, 2007: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the February 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Jan. 25, 2007 The Board Administrator emailed the applicant with concerns about discrepancies in distances shown on the submitted site plans.
- Jan. 25, 29, & 30, 2007 The applicant submitted information beyond what was submitted with the original application (see Attachment A, B, and C).
- Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.
- Feb. 5, 2007 The Development Services Senior Engineer forwarded a review comment sheet marked "No comments."

STAFF ANALYSIS:

- The site is flat, rectangular in shape and 150' x 50' (or 7,500 square feet) in area. The site is zoned PD No. 87. A number of existing trees have been noted on the submitted revised site plan, one of which is in a location that would require removal if

the garage structure were to be shifted eastward towards the existing single family home.

- According to DCAD records, the site is developed with a single family home in “good” condition built in 1930 with 1,912 square feet of living area.
- The subject site is 50’ in width developed with an approximately 40’ wide 1930’s house. As a result, according to the applicant, there is approximately 4’ of width on the north side of the lot, and approximately 6’ of width left of the south side of the lot, neither wide enough to locate a driveway on either side of the existing house whereby a detached garage in the back yard could be accessed via Willomet Avenue as observed and noted by the Board Administrator in a field visit of the site and surrounding area. In addition, if the applicant were to locate the proposed enclosed parking spaces 20’ from the alley right-of-way line, an existing mature tree that has been noted on the submitted site plan would have to be removed.
- The applicant could build the garage structure without garage doors (or enclosed parking spaces) if the board were to deny the variance request. The need for the parking variance is merely to allow the parking spaces in the garage structure to be enclosed with garage doors. Granting the request will allow the applicant to enclose parking spaces with garage doors which otherwise could be constructed as an open garage (or carport) with unenclosed parking spaces.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the parking regulations of 14’ to enclose parking spaces in a new detached garage structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the parking regulations of 14’ requested to enclose parking spaces in a new garage structure is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 87 zoning classification.
 - The variance to the parking regulations of 14’ requested to enclose parking spaces in a new garage structure would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 87 zoning classification.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
 1. Compliance with the submitted site plan is required.
 2. An automatic garage door must be installed and maintained in working order at all times.
 3. At no time may the area in front of the garage be utilized for parking of vehicles.
 4. All applicable permits must be obtained.

These conditions are imposed to help assure that the variance will not be contrary to public interest.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Jefferson

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan dated 1-30-07 is required.
- An automatic garage door must be installed and maintained in working order at all times.
- At no time may the area in front of the garages be utilized for parking of vehicles.
- All applicable permits must be obtained.

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-030

BUILDING OFFICIAL’S REPORT:

Application of Sterling Projects, represented by Karl A. Crawley, for a variance to off-street parking regulations at 2800 State Street. This property is more fully described as Lot 7 in City Block K/574 and is zoned PD-225 (Subzone IIa) in which a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct structures that provide enclosed parking spaces with a 15 foot setback which would require a variance of 5 feet to the off-street parking regulations.

LOCATION: 2800 State Street

APPLICANT: Sterling Projects
Represented by Karl A. Crawley

REQUEST:

- A variance to the off-street parking regulations of 5' is requested in conjunction with constructing and maintaining attached garages on three proposed single family homes whereby the enclosed parking spaces in the garages would be less than 20' from the Worthington Street right-of-way line. The subject site is currently developed with four single family homes.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted site plan is required.
2. Automatic garage doors must be installed and maintained in working order at all times.
3. At no time may the area in front of the garages be utilized for parking of vehicles.
4. All applicable permits must be obtained.

Rationale:

- Although there is only a proposed 15' distance between the proposed parking spaces (garage doors) and the Worthington Street right-of-way line, there is a 22' distance proposed to be provided between the proposed enclosed parking spaces and the Worthington Street projected curb line - a distance that should accommodate the length of most vehicles.
- The proposed structures are in compliance with the front, side and rear yard setback regulations. The only variance need in this case is to the off-street parking regulations, specifically the parking regulation regarding the distance that must be provided between an enclosed parking space (garage door) and a right-of-way line.
- The site is flat, rectangular in shape, and, according to the submitted site plan, 40' wide by 150' in length) or 6,000 square feet in area. The 40' width would only allow a 20' length for development if the applicant were to locate the enclosed parking spaces 20' from the Worthington Street right-of-way line.
- The Development Services Senior Engineer supports the request.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of

land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS:

- The Dallas Development Code requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley.
The applicant has submitted a site plan with a notation indicating “proposed setback for garage 15’-0” “on the three garages that would attach to the proposed single family homes to be developed on the site. (Note that the submitted site plan indicates that enclosed parking spaces in the new garages will be located 15’ from the Worthington Street right-of-way line or approximately 22’ from the Worthington Street pavement line).
- The applicant could build the garage structures without garage doors (or enclosed parking spaces) if the board were to deny the variance request. The need for the parking variance is merely to allow the parking spaces in the three single family structures to be enclosed with garage doors.
- According to calculations taken from the submitted site plan by the board administrator, there would be an approximate 20’ length left in each single family home if the applicant were to comply with the 20’ distance requirement for an enclosed parking space since the lot’s width on the submitted site plan is 40 feet.
- The site is flat, rectangular in shape, and, according to the submitted site plan, 40’ wide by 150’ in length) or 6,000 square feet in area. (Note that the submitted plat indicates that the site is 37’ wide by 150’ in length).
- According to DCAD records the property located at 2800 State Street is developed with a “converted residence (frame exterior)” built in 1915 that is 2,409 square feet in area.
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details about the request.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 225 (Planned Development District)
North: PD No. 225 (Planned Development District)
South: PD No. 225 (Planned Development District)

East: PD No. 225 (Planned Development District)
West: PD No. 225 (Planned Development District)

Land Use:

The subject site is developed with what appears to be 4 single family structures. The areas to the north, east, south, and west are developed with residential uses.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

Timeline:

- Dec. 28, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Jan. 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Jan. 19, 2007: The Board Administrator contacted the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the January 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the February 2nd deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

- Jan. 24, 2007 The applicant's representative revised the lot size on the application from 7,500 square feet to 6,000 square feet. The applicant's representative stated that he believed that the true width of the site was that what is shown on the submitted site plan at 40' verses the width of the site shown on the plat map of the site at 37' in width.
- Jan. 26, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).
- Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.
- Feb. 5, 2007 The Development Services Senior Engineer forwarded a review comment sheet marked "Has no objections."

STAFF ANALYSIS:

- The site is flat, rectangular in shape, and, according to the submitted site plan, 40' wide by 150' in length) or 6,000 square feet in area. (Note that the submitted plat indicates that the site is 37' wide by 150' in length).
- The submitted site plan indicates that enclosed parking spaces in the new garages will be located 15' from the Worthington Street right-of-way line or approximately 22' from the Worthington Street pavement line.
- According to calculations taken from the submitted site plan by the board administrator, there would be an approximate 20' length left in each single family home if the applicant were to comply with the 20' distance requirement for an enclosed parking space since the lot's width on the submitted site plan is 40 feet.
- The applicant could build the garage structures without garage doors (or enclosed parking spaces) if the board were to deny the variance request. The need for the parking variance is merely to allow the parking spaces in the three single family structures to be enclosed with garage doors. Granting the request will allow the applicant to enclose parking spaces with garage doors which otherwise could be constructed as open garages (or carports) with unenclosed parking spaces.
- The Development Services Senior Engineer has indicated that he "Has no objections" to this request.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the parking regulations of 5' to enclose parking spaces in new garage structures will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in

unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance to the parking regulations of 5' requested to enclose parking spaces in new garage structures is necessary to permit development of the subject site (that is flat, rectangular in shape, 40' in width, and approximately 6,000 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 225 zoning classification.
- The variance to the parking regulations of 5' requested to enclose parking spaces in new garage structures would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 225 zoning classification.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
 1. Compliance with the submitted site plan is required.
 2. Automatic garage doors must be installed and maintained in working order at all times.
 3. At no time may the area in front of the garages be utilized for parking of vehicles.
 4. All applicable permits must be obtained.

These conditions are imposed to help assure that the variance will not be contrary to public interest.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2007

APPEARING IN FAVOR: Karl Crawley, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: Stanhope Hopkins, 2839 Thomas Ave., Dallas, TX

MOTION: Griggs

I move that the Board of Adjustment, in Appeal No. **BDA 067-030**, on application of Sterling Projects, represented by Karl A. Crawley, **grant** the five-foot variance to the off-street parking regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

1. Compliance with the submitted site plan is required.
2. Automatic garage doors must be installed and maintained in working order at all times.
3. At no time may the area in front of the garages be utilized for parking of vehicles.
4. All applicable permits must be obtained.

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-033

BUILDING OFFICIAL’S REPORT:

Application of Metro Code Analysis, represented by Nat Martinez, for a special exception to the fence height regulations at 5030 Park Lane. This property is more fully described as Lot 7 in City Block 10/5583 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 11 foot 6 inch fence in the required front yard setback which would require a variance of 7 feet 6 inches.

LOCATION: 5030 Park Lane

APPLICANT: Metro Code Analysis
Represented by Nat Martinez

February 13, 2007 Public Hearing Notes:

- The applicant’s representative clarified at the public hearing that the highest component of his fence proposal was 10 feet in height hence a special exception request of 6 feet rather than 7 feet 6 inches.

REQUEST:

- A special exception to the fence height regulations of 7.5’ is requested in conjunction with constructing and maintaining the following in the site’s 40’ front yard setback on Park Lane:
 - An 8’ high masonry wall with 9’ 1 1/2” high columns;
 - Two approximately 5’ – 8’ high gates (of unspecified materials) flanked by entry gate columns ranging in height from 10’ – 11’ ¼”.
 The site is developed with a single family home.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a series of documents including one sheet that includes a site plan, a typical column section, a wall section, a wall elevation, and a partial site plan showing wall location (see Attachment A), another document that is entitled "wall elevation, and another document entitled "site plan." These documents indicate a fence/wall and gate proposal that would be located in the site's Park Lane front yard setback and would reach a maximum height of 11' ¼".
- The submitted site plan indicates the location of the "proposed new masonry wall and gates at the front property line" in the Park Lane front yard setback. The following additional information was gleaned from this site plan:
 - The proposed fence/wall would be approximately 180' in length parallel to Park Lane.
 - The proposed fence/wall and gates are to be located on the site's front property line (or approximately 24' from the Park Lane pavement line).
- The following additional information was gleaned from the submitted wall elevation:
 - A notation of "Proposed new masonry wall and gates at the front property line."
 - A notation of "10'-0" at 30' x 24' gate columns."
- The elevation of the proposal shows that two entry columns will reach a height of 11'. On January 24th, the board administrator left a message with the applicant's representative informing him that unless informed otherwise by January 26th, the appeal would only convey a special exception of 6' to allow for nothing higher than 10' in height. The applicant's representative responded by pointing out a notation on an elevation conveying a 11' ¼" entry column which resulted in a revised Building Official's Report reflecting a special exception request of 7' 6" (see Attachment A).
- The proposed fence/wall would be located on a site where one single family home would have direct frontage. This home immediately west of the site with direct frontage to the proposal has its own combination fence/wall at approximately 9' in height (which appears to be a result of BDA 94-094).

- The Board Administrator conducted a field visit of the site and surrounding area along Park Lane (approximately 500 feet north and south of the site) and noted one additional fence/wall beyond that which was described above which appeared to be located in the front yard setback: an approximately 5' high open metal fence located immediately north of the subject site.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac (A) (Single family district 1 acre)
North: R-1ac (A) (Single family district 1 acre)
South: R-1ac (A) (Single family district 1 acre)
East: R-1ac (A) (Single family district 1 acre)
West: R-1ac (A) (Single family district 1 acre)

Land Use:

The subject site is developed with a single family home. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. BDA94-094, 5001 Park Lane (the lot immediately west of the subject site) | <p>On August 9, 1994, the Board of Adjustment granted a request for a special exception to the fence height regulations of 4' 6" and imposed the following condition in conjunction with the approval: Compliance with the submitted elevation, site plan, and landscape plan is required. The case report stated that a request was made to construct and maintain an 8' 6" high open metal fence with brick columns.</p> |
|---|--|

Timeline:

- | | |
|----------------|--|
| Dec. 29, 2006: | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| Jan. 19, 2007: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A. |

- Jan. 23, 2007: The Board Administrator left the applicant's representative an extended voice message that conveyed the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the February 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Jan. 25, 2007: The Board Administrator left a message with the applicant's representative requesting an account as to how high of height was actually needed in conjunction with the appeal: were the entry gate columns a maximum 10' in height or 11' in height.
- Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- January 8, 2007 The applicant submitted additional information to the Board Administrator (see Attachment A). This information was submitted past the January 2nd staff review team meeting.

STAFF ANALYSIS:

- Documents have been submitted including a scaled site plan indicating the location of the proposed fence/wall, columns, and gates relative to their proximity to the property line and pavement line (the proposal is shown to be about 180' in length parallel to Park Lane, located approximately on the front property line or about 24' from the Park Lane pavement line).
- Elevations have been submitted that indicate the heights and materials of the proposal (8' high masonry wall with 9' 1 1/2" columns with two approximately 5' – 8' high gates flanked by columns ranging from 10' – 11' 1/4" in height).
- The proposed fence/wall would be located on a site where one single family home would have direct frontage. This home immediately west of the site with direct frontage to the proposal has its own combination fence/wall at approximately 9' in height (which appears to be a result of BDA 94-094).
- One additional fence/wall which appeared to be located in the front yard setback beyond that which was described above was noted in a staff field visit of the area along Park Lane (approximately 500 feet north and south of the site): an approximately 5' high open metal fence located immediately north of the subject site.
- As of February 5, 2007, no letters had been submitted to staff in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 7' 6" (whereby the fence/wall, columns, and gates, that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 7' 6" with conditions imposed that the applicant complies with the submitted site plan/elevation document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2007

APPEARING IN FAVOR: Nat Martinex, 2630 W. Freeway, Ste 200, Dallas, TX

APPEARING IN OPPOSITION: Barry Knight, 5400 Renaissance Tower, Dallas, TX

MOTION #1: Griggs

I move that the Board of Adjustment, in Appeal No. **BDA 067-033**, on application of Metro Code Analysis, represented by Nat Martinez, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: No one

AYES: 0

NAYS: 0 -

MOTION FAILED FOR LACK OF A SECOND

MOTION #2: Jefferson

I move that the Board of Adjustment, in Appeal No. **BDA 067-033**, on application of Metro Code Analysis, represented by Nat Martinez, **grant** the request of this applicant to construct a 10 foot-high fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.

SECONDED: No one
AYES: 0
NAYS: 0 -
MOTION FAILED FOR LACK OF A SECOND

MOTION #3: **Gabriel**

I move that the Board of Adjustment in Appeal No. **BDA 067-033**, hold this matter under advisement until **March 20, 2007**.

SECONDED: **Jefferson**
AYES: 4 – Richmond, Gabriel, Schweitzer, Jefferson
NAYS: 1 - Griggs
MOTION PASSED: 4– 1

FILE NUMBER: BDA 067-024

BUILDING OFFICIAL’S REPORT:

Application of Jeff Burrow, represented by Robert Baldwin, for a variance to the landscape regulations and a special exception to the fence height regulations at 6726 Lakewood Blvd. This property is more fully described as Lot 4 in City Block P/2801 and is zoned CD-2 which prohibits any fence in the required front yard. The applicant proposes to construct a 6 foot fence in the required front yard which would require a variance to the landscape regulations and a special exception of 2 feet to the fence height regulations.

LOCATION: 6726 Lakewood Boulevard

APPLICANT: Jeff Burrow
Represented by Robert Baldwin

February 13, 2007 Public Hearing Notes:

- The Board Administrator circulated a February 6th letter written by applicant's representative at the briefing (see Attachment B). This letter requested that the board deny the applications without prejudice.

REQUESTS:

- The following appeals have been made in this application:
 1. a variance to the landscape regulations; and
 2. a special exception to the fence height regulations of 2 feet.These appeals are made in conjunction with constructing and maintaining an 4' high stone wall with 4' 6" high columns with a 6' high open wrought iron pedestrian gate, and a 4' 6" high combination stone/open metal fence/wall to be located in the site's 60' front yard setback. (The site is developed with a single family home).

STAFF RECOMMENDATION: (Landscape Variance)

Denial

Rationale:

- Granting this variance would be contrary to the public interest: the Senior Planner that oversees activity in Conservation District No. 2 submitted a review comment sheet marked "Recommends that this be denied" commenting that granting this request would adversely affect the significant viewsheds that characterize the Lakewood neighborhood. (Only one other fence/wall was noted in the area – an approximately 1' high stone wall immediately west of the site running perpendicular to Lakewood Boulevard).
- The need for a variance to the landscape regulations has not been substantiated by the applicant. There is no physical site constraint (area, shape or slope) of the subject site that precludes locating the proposed fence and wall in compliance with the 60' front yard setback (which in turn would allow the fence to be in compliance with the landscape regulations of Conservation District No. 2 – the regulations that the applicant is seeking the variance from). The lot is not constrained by slope (relatively flat), an irregular shape (basically rectangular in shape) or a restrictive area (the site is approximately 36,000 square feet in area in CD No. 2 which prior to its creation in 1988 had been zoned R-10 where lots are typically 10,000 square feet in area).

STAFF RECOMMENDATION: (Fence Height Special Exception)

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

GENERAL FACTS (related to the landscape variance):

- Section 8 of Conservation District No. 2 (“Landscaping provisions”) states that fences and walls are prohibited in the front yard except for balustrades, porch rails, hand rails, and retaining walls with heights lower than six inches above grade. The applicant has submitted a site plan/elevation document that indicates a “new 4’ stone fence similar (sic) to existing” and a “new stone columns & w.i. railing fence” located 40’ 5/16” from the site’s front property line. Since the subject site lies within a specifically written Conservation District zoning district that does not provide for requests for special exceptions to landscape requirements, all requests pertaining to deviations from its “Landscaping provisions” must be appeals for a *variance* to these provisions (as provided as a general power and duty of the board provided in the Dallas Development Code). Had CD No. 2 provided a special exception to its “Landscaping provisions,” the applicant would be required to address a standard pertaining largely around how the request not adversely affecting neighboring property as opposed to being required to address a standard proving property hardship and all other provisions to be substantiated in a variance request.
- The submitted site plan delineates a “new stone fence similar (sic) to existing” that is about 60’ in length and located 40’ 5/16” the front property line.
- The site appears to be relatively flat, generally rectangular in shape (151’ on the north, 151’ on the south, 245’ on the east, and 232’ on the west) and approximately 36,000 square feet in area. The site is zoned CD No. 2 which prior to its creation in 1988 had been zoned R-10 where lots are typically 10,000 square feet in area.

- DCAD records indicate that the site is developed with a single family home in “unsound” condition built in 1931 with 3,141 square feet of living area and a 1,062 square foot “log recreation bg.”

GENERAL FACTS (related to the fence height special exception):

- The applicant has submitted a site plan/elevation document that indicates a fence, columns, and gate that exceed 4’ in height. In addition to the applicant obtaining a variance to the landscape regulations to construct and maintain a fence/wall of any height higher than 6” in the front yard setback, the applicant must additionally obtain a fence height special exception for any portion of a fence, columns or gate that exceeds 4’ in height.
- The Dallas Development Code states that a fence may not exceed 4’ above grade when located in the required front yard in all residential districts except multifamily districts.
The site plan on this document indicates a “new 4’ stone fence similar (sic) to existing” located 40’ 5/16” from (and parallel to) the site’s front property line. The site plan also indicates a “new stone columns & w.i. railing fence” located in the site’s 60’ front yard setback perpendicular to the street.
The site plan/elevation document includes two partial fence elevations of the fence/walls proposed to be located in the site’s front yard setback. One elevation represents the fence/wall that is proposed to be located parallel to Lakewood Boulevard. This elevation indicates an approximately 34’ long, 4’ high stone wall with a 6’ long, 6’ high arched open wrought iron pedestrian gate. (The fence appears to be about 60’ in length on the submitted site plan). The other elevation represents the fence that is proposed to be located perpendicular to Lakewood Boulevard. This elevation indicates an approximately 11’ long , 4’ 6” high open wrought iron fence with 1’ stone base with 4’ 6” high stone columns. (This fence appears to be 20’ in length on the submitted site plan).
- The 4’ 6” high columns and 6’ high gate proposed to run parallel to Lakewood Boulevard are shown to be located between approximately 40’ – 50’ from the front property line or 52’ – 62” from the pavement line.
- There are three single family homes that would have frontage to the proposal.
- The Board Administrator conducted a field visit of the site and surrounding area along Lakewood Boulevard (about 500’ east and west of the subject site) and noted no other fences above four (4) feet high which appeared to be located in the front yard setback. (One fence was noted immediately west of the subject site *below* 4’ in height –this “fence” is an approximately 1’ high stone wall that runs perpendicular to the street and if constructed prior to the creation of CD No. 2 in 1998, would most likely be deemed a nonconforming structure).

BACKGROUND INFORMATION:

Zoning:

Site: CD No. 2 (Conservation District No. 2)
North: CD No. 2 (Conservation District No. 2)
South: CD No. 2 (Conservation District No. 2)
East: CD No. 2 (Conservation District No. 2)
West: PD CD No. 2 (Conservation District No. 2)

Land Use:

The subject site is developed with a single family home. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

Timeline:

- Dec. 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Jan. 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Jan. 19, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the February 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the February public hearing after considering the information/evidence and

testimony presented to them by the applicant and all other interested parties.

Jan. 19, 2007: The Board Administrator contacted the applicant's representative to inform him that his request to construct a fence/gate in the required front yard setback that would reach 6' in height would require a *variance* to the landscape regulations (as opposed to the special exception referenced in the Building Official's Report) *and* a special exception to the fence height regulations.

Jan. 23, 2007: The Board Administrator obtained a revised Building Official's Report on this appeal – revisions that reflected the need for a variance to the landscape regulations, and a special exception to the fence height regulations (see Attachment A).

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The Comprehensive Senior Planner that oversees activity in Conservation District No. 2 submitted a review comment sheet marked "Recommends that this be denied." The planner made the following additional comments: "A variance to the landscape regulations of the Lakewood Conservation District (CD #2) would be contrary to the public interest and would adversely affect the significant viewsheds that characterize the Lakewood neighborhood. Furthermore, the lot does not differ from area, shape or slope in that the existing wall could be replaced with the proposed wall and meet the landscape criteria. Staff is concerned with the precedent approval of this application would set."

STAFF ANALYSIS (related to the variance):

- The site is located in a Conservation District that has specifically established a provision prohibiting fences and walls in the front yard except for balustrades, porch rails, hand rails, and retaining walls with heights lower than six inches in height.
- The site appears to be flat, generally rectangular in shape (approximately 151' x 240') and approximately 36,000 square feet in area. The site (zoned CD No. 2 which prior to its creation in 1988 had been zoned R-10 where lots are typically 10,000 square feet in area) is over 3 times larger than lots typically found in the zoning district.

- The Senior Planner that oversees activity in Conservation District No. 2 submitted a review comment sheet marked “Recommends that this be denied.” The planner made the following additional comments: “A variance to the landscape regulations of the Lakewood Conservation District (CD #2) would be contrary to the public interest and would adversely affect the significant viewsheds that characterize the Lakewood neighborhood. Furthermore, the lot does not differ from area, shape or slope in that the existing wall could be replaced with the proposed wall and meet the landscape criteria. Staff is concerned with the precedent approval of this application would set.”
- The applicant has the burden of proof in establishing the following with regard to the landscape variance request:
 - That granting the variance to the landscape regulations requested to construct and maintain a fence/wall in the front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD No. 2 zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD No. 2 zoning classification.
- If the Board were to grant the landscape variance request, imposing a condition whereby the applicant must comply with the submitted site plan/elevation, a fence/wall could be constructed and maintained in the 60' front yard setback up to 4' in height. In order for the applicant to be able to construct and maintain the fence/wall as shown on the submitted site plan/elevation, the board would have to grant the fence height special exception in addition to the variance.

STAFF ANALYSIS (related to fence height special exception):

- A scaled site plan/elevation has been submitted that documents the location of the proposed fence/wall, columns, and gate proposed to exceed 4' in height and located in the front yard setback. The site plan documents the location of the proposed fence/wall, columns, and gate proposed to exceed 4' in height relative to their proximity to the front property line and pavement line.
- Elevations on the site plan/elevation denote the heights and materials of the proposal parallel to Lakewood Boulevard (4' 6" high stone columns and open wrought iron entry gate) and perpendicular to Lakewood Boulevard (a 4' 6" high open wrought iron fence with 1' high stone base).
- There are three single family homes that would have frontage to the proposal.
- No other fences above four (4) feet high were noted in the front yard setbacks of surrounding lots on the block. (One fence was noted immediately west of the subject

site *below* 4' in height –this “fence” is an approximately 1' high stone wall that runs perpendicular to the street and if constructed prior to the creation of CD No. 2 in 1998, would most likely be deemed a nonconforming structure).

- The Comprehensive Senior Planner that oversees activity in Conservation District No. 2 submitted a review comment sheet marked “Recommends that this be denied.” The planner made the following additional comments: “A variance to the landscape regulations of the Lakewood Conservation District (CD #2) would be contrary to the public interest and would adversely affect the significant viewsheds that characterize the Lakewood neighborhood. Furthermore, the lot does not differ from area, shape or slope in that the existing wall could be replaced with the proposed wall and meet the landscape criteria. Staff is concerned with the precedent approval of this application would set.”
- As of February 5, 2007, one letter had been submitted in support of the request, and one letter had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' (whereby the proposed fence, columns, and gate to exceed 4' in height in the site's front yard setbacks) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 2' with conditions imposed that the applicant complies with the submitted site plan/elevation document would provide assurance that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document.
- Note that the applicant must additionally obtain his requested variance to the landscape regulations to construct and maintain any fence (other than a balustrade, porch rail, hand rail, and retaining wall with a height lower than six inches) in the site's 60' front yard setback.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2007

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-024**, on application of Jeff Burrow, represented by Robert Baldwin, deny the variance to the landscaping regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION#2: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-024**, on application of Jeff Burrow, represented by Robert Baldwin, **deny** the variance to the fence height regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-025

BUILDING OFFICIAL’S REPORT:

Application of Noel Ellison, represented by Robert Baldwin, for a variance to the front yard setback regulations at 1406 Highland Road. This property is more fully described as Lot 12 and part of Lot 13 in City Block 11/5262 and is zoned PD-575 which requires a front yard setback of 80 feet. The applicant proposes to construct a building and provide a 67 foot front yard setback which would require a variance of 13 feet.

LOCATION: 1406 Highland Road

APPLICANT: Noel Ellison
Represented by Robert Baldwin

February 13, 2007 Public Hearing Notes:

- The Board Administrator circulated a February 9th letter written by applicant’s representative at the briefing (see Attachment D). This letter provided additional details about the request. The applicant’s representative submitted three letters in support of the application at the public hearing.

REQUEST:

- Variances to the front yard setback regulations of up to 13’ are requested in conjunction with constructing and maintaining additions to an existing single family home that would be located in the site’s 80’ front yard setback. The site is developed with a single family home that, according to DCAD, has about 1,500 square feet of living area.

STAFF RECOMMENDATION:

Denial

Rationale:

- The need for variances to the front yard setbacks for the proposed additions to the existing single family home have not been substantiated by the applicant. Although the site is sloped and irregular in shape, staff concluded that these physical site constraints did not preclude the site from being developed with a comparably-sized house (and garage) found in the same zoning district that could comply with the setbacks. The lot is approximately 23,000 square feet in area, which is over twice the size of lots in the R-10(A) zoning district that was on the site prior to the creation of existing PD No. 575 zoning district on the site in 2000.
- Staff was shown field slides taken by the Board Administrator of the site with a number of trees in its front and back yard. Although the applicant contends that there are trees in the back yard (among other things including the slope and shape of the site) that preclude the garage from being located behind the house, no documentation has been given on a plan that pinpoints the location of any trees on the site that may or may not preclude the location of the additions elsewhere on the lot, nor is there any documentation on a plan that indicates that such trees on the site are intended to be preserved.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS:

- Lots located in Subdistrict I of the PD No. 575 zoning district are required to provide an 80' front yard setback.

The applicant has submitted a scaled site plan that indicates two additions proposed to be added to a single family home. One addition is labeled “area of new garage” and is located 75’ 9 ¾” from the site’s front property line (or about 4’ 3” into the 80’ front yard setback). The other addition is labeled “addition to residence” and is located 71’ 0 ¾” from the front property line (or about 8’ 11” into the 80’ front yard setback). Although the application dated on 12-17-06 requests a variance of 4’ 4” and a letter written by the applicant’s representative requests a variance of 9’, the Building Inspection Development Code Specialist determined at the January 30th staff review team that a variance of 13’ was actually needed given dimensions shown on the submitted site plan where a portion of one of the additions is located as close as 67’ from the site’s front property line.

- According to calculations taken from the submitted site plan by the board administrator, about 120 of the 600 square foot garage would be located in the front yard setback, and the entire portion of the other addition (about 126 square feet) would be located in the front yard setback. (Note that about 40 square feet of the existing house is located in the front yard setback. This portion of the house is most-likely deemed a nonconforming structure since, according to DCAD, the house was constructed in 1950, and prior to the creation of PD No. 575 in 2000, the site had been zoned R-10(A) where the front yard setback is 30’).
- The site is sloped, irregular in shape (pentagon), and approximately 23,000 square feet in area. The site is zoned PD No. 575 where prior to its creation in 2000, the site had been zoned R-10(A) where lots are typically 10,000 square feet in area.
- According to DCAD records, the subject site is developed with the following:
 1. a single family home in “average” condition with 1,450 square feet of living area built in 1950;
 2. a 240 square foot “sunroom;” and
 3. a 312 square foot enclosed garage.
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachments A and C). This information included letters that provided additional details about the request.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 575 (Planned Development District)
North: PD No. 575 (Planned Development District)
South: PD No. 575 (Planned Development District)
East: PD No. 575 (Planned Development District)
West: PD No. 207 (Planned Development District)

Land Use:

The subject site is developed with a single family structure. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

Timeline:

- Dec. 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Jan. 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Jan. 19, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the January 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the February 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Jan. 26, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).
- Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of

Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The District Manager of Code Compliance submitted a Review Comment Sheet marked "Has no objections."

Jan. 31, 2007 The Building Inspection Development Code Specialist submitted a revised Building Official's Report that conveyed an increased variance request (see Attachment B).

Feb. 2, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment C).

STAFF ANALYSIS:

- The site is sloped, irregular in shape (pentagon), and approximately 23,000 square feet in area. The site is zoned PD No. 575 where prior to its creation in 2000, the site had been zoned R-10(A) where lots are typically 10,000 square feet in area.
- Although the applicant's representative has referenced how the number of trees in the back yard (along with the slope of the lot and the design of the house) precludes locating the garage behind the house, the site plan does not show the location of any trees that (may or may not be intended to be preserved and in turn) restrict the applicant from locating the additions outside the front yard setback.
- According to calculations taken from the submitted site plan by the board administrator, about 120 of the 600 square foot garage would be located in the front yard setback, and the entire portion of the other addition (about 126 square feet) would be located in the front yard setback. (Note that about 40 square feet of the existing house is located in the front yard setback. This portion of the house is most-likely deemed a nonconforming structure since, according to DCAD, the house was constructed in 1950, and prior to the creation of PD No. 575 in 2000, the site had been zoned R-10(A) where the front yard setback is 30').
- The applicant has the burden of proof in establishing the following related to the front yard variance requests:
 - That granting the variances to the front yard setback regulations of up to 13' requested to construct and maintain additions to an existing single family home will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts in the same PD No. 575 zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing

this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts in the same PD No. 575 zoning classification.

- If the Board were to grant the front yard variance requests of up to 13', imposing a condition whereby the applicant must comply with the submitted site plan, the additions would be limited to the building footprint shown on this plan – where additions could be located as close as 67' from the front property line (or 13' into the site's 80' front yard setback).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2007

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jefferson**

I move that the Board of Adjustment, in Appeal No. **BDA 067-025**, on application of Noel Ellison, represented by Robert Baldwin, **grant** the 13-foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-027

BUILDING OFFICIAL’S REPORT:

Application of Chuck Quon for variances to the side yard setback regulations, a variance to the rear yard setback regulations, and a variance to the floor area ratio regulations at 3531 James Street. This property is more fully described as Lot 10 in City Block 22/5809 and is zoned R-7.5(A) which requires a 5 foot side yard setback, a 5 foot rear yard setback, and requires that an accessory structure may not exceed 25% of the floor area of the main building. The applicant proposes to maintain a structure and provide 0 foot side yard setbacks which would require variances of 5 feet to the side yard setback regulations, to maintain a structure and provide a 6 inch rear yard setback which would require a variance of 4 feet 6 inches to the rear yard setback regulations, and to maintain an accessory structure that is 1,017 square feet (62% of the floor area

of the main building) which would require a variance of 607 square feet to the floor area regulations.

LOCATION: 3531 James Street

APPLICANT: Chuck Quon

February 13, 2007 Public Hearing Notes:

- The applicant's representative submitted additional written documentation at the public hearing (see Attachment B). This information provided additional details about the requests, photographs of the subject site, and a petition signed by neighbors/owners in support of the requests.

REQUESTS:

- The following appeals have been made in this application:
 1. variances to the side yard setback regulations of 5' are requested in conjunction with maintaining portions of an existing single family home in the site's two side yard setbacks;
 2. variances to the side yard setbacks regulations of 5' and a variance to the rear yard setback of 4' 6" are requested in conjunction with maintaining portions of an accessory structure in the site's two side yard setbacks and in the site's rear yard setback; and
 3. a variance to the FAR regulations is requested with maintaining the accessory structure on the site that is 62% of the floor area of the main building.

STAFF RECOMMENDATION:

Denial

Rationale:

- The need for variances to the side and rear yard setbacks and to the FAR regulations to maintain portions of the existing single family home and accessory structure on the site have not been substantiated by the applicant. Although the site is sloped, this physical site constraint does not preclude the site from being developed with a comparably-sized house (and accessory structure) found in the same zoning district that could comply with setbacks and FAR requirements. In addition, the lot is not constrained by an irregular shape (the site is rectangular in shape) or a restrictive area (the site is over 9,000 square feet in area – larger in size than most lots in the R-7.5(A) zoning district that are typically 7,500 square feet in area).

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS:

- Lots located in an R-7.5(A) zoning district are required to provide a 5' side yard setback for the main structure and for an accessory structure over 15' in height, and to provide a 5' rear yard setback for an accessory structure over 15' in height. (The code states that if an accessory structure is located in the rear 30% of the lot and is less than 15' in height, no side or rear yard setback is required).
The applicant has submitted a site plan and elevations of the main structure and accessory structure that indicate that both the main structure and a 19' 1" high accessory structure are located on the east and west side property lines (or 5' into the 5' side yard setbacks), and that the accessory structure is located (according to the revised Building Official's Report) 6" from the rear property line.
- The accessory structure provisions of the Dallas Development Code requires that the total floor area of any individual accessory structure on a lot, excluding floor area used for parking, may not exceed 25% of the floor area for the main building on lots zoned R-7.5(A).
According to the Building Official's Report, the floor area of the existing accessory structure on this site is 1,017 square feet or 62% of the floor area of the main building. (The Building Inspection Development Code Specialist has calculated the main structure to be 1,640 square feet in area).
- The subject site is sloped, rectangular in shape (150' x 61'), and 9,150 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- According to DCAD records, the site is developed with a single family home built in 1948 with 864 square feet of living area, and a 275 square foot attached garage.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family district 7,500 square feet)

North: R-7.5(A) (Single family district 7,500 square feet)
South: R-7.5(A) (Single family district 7,500 square feet)
East: R-7.5(A) (Single family district 7,500 square feet)
West: LI (Light Industrial)(SUP 93) (Specific Use Permit for electric substation)

Land Use:

The subject site is developed with a single family home. The areas to the north, east, and south are developed with single family uses, and the area to the west appears undeveloped.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

Timeline:

- Dec. 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Jan. 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Jan. 19, 2007: The Board Administrator phoned and emailed the applicant with the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the January 29th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the February 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the February public hearing after considering the information/evidence and

testimony presented to them by the applicant and all other interested parties.

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets with comments were submitted in conjunction with this application.

Jan. 31, 2007 The Building Inspection Development Code Specialist submitted a revised Building Official's Report that conveyed an increased rear yard variance request (see Attachment A).

STAFF ANALYSIS:

- The subject site is sloped, rectangular in shape (150' x 61'), and 9,150 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the side and rear yard setback and FAR regulations requested to maintain portions of an existing home and accessory structure in the side yard setbacks, to maintain the accessory structure in the rear yard setback, and to maintain an accessory structure that is greater than 25% of the floor area of the main structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - Each of the 6 variances is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - Each of the 6 variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- Depending on if the Board were to grant any or all of the 6 variance requests, and impose a site plan and/or elevation as a condition, the structures of any granted request would be limited to that what is shown on the submitted plan and elevation – where possibly the main structure could be maintained on the site's two side property lines (or 5' into the 5' side yard setbacks); where possibly the accessory

structure could be maintained on the site's two side property lines (or 5' into the 5' side yard setbacks); where possibly the accessory structure could be maintained 6" from the site's rear property line; and where possibly the 1,017 square foot accessory structure that is 62% of the floor area of the main building could be maintained on the site.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2007

APPEARING IN FAVOR: Chuck Quon, 3531 James St., Dallas, TX

APPEARING IN OPPOSITION: Grant W. Galliford, 6202 Parkdale Dallas, TX
Bod Laudadio, 5603 Hollis Ave., Dallas, TX
Nora Czigan, 5817 Overlook, Dallas, TX
Rodney Milliken, 6306 Military Pkwy, Dallas, TX
Robert Powdrill, 5718 Overlook, Dallas, TX

MOTION #1: Jefferson

I move that the Board of Adjustment in Appeal No. **BDA 067-027**, suspend the rules and accept the additional evidence beyond 5 printed pages that is being presented to us today.

SECONDED: Gabriel

AYES: 4 – Richmond, Gabriel, Griggs, Jefferson

NAYS: 1 - Schweitzer

MOTION PASSED: 4– 1

MOTION #2: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 067-027**, on application of Chuck Quon, **deny** the variances to the southwest and northeast side yard setback regulations to maintain portions of an existing single family structure requested by this applicant **with** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant

SECONDED: Gabriel

AYES: 2 – Gabriel, Schweitzer,

NAYS: 3 - Richmond, Griggs, Jefferson

MOTION FAILED 3– 2

MOTION #3: Griggs

I move that the Board of Adjustment, in Appeal No. **BDA 067-027**, on application of Chuck Quon, **deny** the variances to the southwest and northeast side yard setback

regulations to maintain portions of an existing single family structure **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant

SECONDED: **Jefferson**

AYES: 5 – Richmond, Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

MOTION #4: **Griggs**

I move that the Board of Adjustment, in Appeal No. **BDA 067-027**, on application of Chuck Quon, **deny** the variances to the side yard setback regulations to maintain portions of an existing accessory structure in the southwest and northeast side yard requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #5: **Griggs**

I move that the Board of Adjustment, in Appeal No. **BDA 067-027**, on application of Chuck Quon, **deny** the variance to the rear yard setback regulations to maintain a portion of an existing accessory structure requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Gabriel**

AYES: 2 – Gabriel, Griggs,

NAYS: 3 - Richmond, Schweitzer, Jefferson

MOTION FAILED 2– 3

MOTION #6: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-027**, on application of Chuck Quon, **grant** the four-and-a-half-foot variance to the rear yard setback

regulations to maintain a portion of an existing accessory structure, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevations is required.

SECONDED: Jefferson

AYES: 4 – Richmond, Gabriel, Schweitzer, Jefferson,

NAYS: 1 - Griggs

MOTION PASSED 4– 1

MOTION #7: Griggs

I move that the Board of Adjustment, in Appeal No. **BDA 067-027**, on application of Chuck Quon, **deny** the variance to the floor area ratio regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Schweitzer

AYES: 4 – Richmond, Gabriel, Schweitzer, Griggs

NAYS: 1 - Jefferson

MOTION PASSED 4– 1

FILE NUMBER: BDA 067-028

BUILDING OFFICIAL'S REPORT:

Application of John Kirtland, represented by Karen Killgo, for special exceptions to the fence height and visibility obstruction regulations at 5432 Falls Road. This property is more fully described as Lot 5 in City Block 3/5604 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet and requires 20 foot visibility triangles at driveway approaches. The applicant proposes to construct an 8 foot fence in the required front yard setback which would require a special exception of 4 feet to the fence height regulations, and to construct and maintain items within required visibility triangles which would require a special exception to the visibility obstruction regulations.

LOCATION: 5432 Falls Road

APPLICANT: John Kirtland
Represented by Karen Killgo

REQUESTS:

- The following appeals have been made in this application on a site developed with a single family home:
 1. A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining the following in the site's 40' front yard setback along Hollow Way Road:
 - An approximately 150' long, 6' high open wrought iron fence and entry gate with 8' stone columns parallel to Hollow Way Road; and
 - An approximately 40' long, 6' high chain link fence perpendicular to Hollow Way Road on the south side of the site.
 2. A special exception to the visibility obstruction regulations is requested in conjunction with constructing and maintaining two 8' high stone columns and possibly landscape materials in the site's two, 20' drive approach visibility triangles into the site from Hollow Way Road. The site is being developed with a single family home.

(No fence is shown on the submitted site plan to be located in the site's Falls Road 40' front yard setback).

STAFF RECOMMENDATION (fence height special exception):

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

STAFF RECOMMENDATION (visibility obstruction special exception):

Approval, subject to the following conditions:

1. Compliance with the submitted revised site plan and fence elevation is required.
2. All/any landscape materials located in required visibility triangle areas must be maintained outside the area between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

Rationale:

- The City's Development Services Senior Engineer states that the requests will not create a traffic hazard on the condition that shrubs are removed inside the 20' x 20' driveway visibility triangles on Hollow Way Road.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visibility obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

GENERAL FACTS (related to the fence height special exception):

- The subject site is located at the intersection of Falls Road and Hollow Way Road. The site has a front yard setback along Falls Road (since this frontage is the shorter of the site's two frontages) and along Hollow Way Road. Although the site's Hollow Way Road frontage is the longer of the site's two frontages which typically would be deemed a side yard where a 9' high fence could be erected by right, the site's Hollow Way Road frontage is deemed a front yard in order to maintain continuity of an established front yard setback on this street. (Houses immediately south of the subject site face east on Hollow Way Road and have a 40' front yard setback along Hollow Way Road).
- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
Originally the applicant has submitted an elevation that showed a fence/wall of unspecified materials that was 6' in height and columns that were 8' in height, and a site plan where a yellow line appeared to denote the location of the fence that would exceed 4' in height. This line was about 150' in length, parallel to Hollow Way Road, located on the site's property line (or about 16' from the pavement line).
- The originally submitted elevation did not specify the building materials that the fence/wall would be comprised of, but indicated a maximum height of 8' for columns and 6' for the fence/wall.
- Although landscape materials were conceptually shown on the originally submitted site plan, specifications about the sizes, species, and heights were not noted. The revised site plan denotes no specific landscape materials to be planted in conjunction with the request.
- It was established in a January 25th meeting between the applicant's representative and Board Administrator, that, according to the submitted site plan, a portion of the existing structure was located in the site's 40' front yard setback along Hollow Way Road. The applicant's representative informed the Board Administrator on January 29th that the applicant chose to only have the board consider the fence issues (fence height and visibility obstruction matters) as part of this application, and that the applicant would file a separate application for a variance to deal with the front yard encroachments at a later date if indeed it was officially determined that a structure was located in the front yard setback.

- On January 29, 2007, the applicant's representative submitted a revised site plan and two revised fence elevations (see Attachment A). These revised plans and elevations provided clarity that had not been shown on the originally submitted plans with regard to fence materials and fence location.
- On February 1, 2007, the applicant's representative submitted another revised site plan (see Attachment B). This revised plan showed no structure in the 40' front yard setback, and that a portion of a stone wall that was to exceed 4' in height perpendicular to Hollow Way Road was not in the 40' front yard setback after all, therefore not an issue with the board.
- There is one single family home that would have direct frontage to the proposed fence/wall. (This single family home has an approximately 6' high open wrought iron fence in its front yard setback on *Falls Road* that appears to have been "special excepted by the board in 1997: BDA967-290. Note that the majority of the length of this fence facing west on Hollow Way Road is located in this site's side yard setback).
- The Board Administrator conducted a field visit of the site and surrounding area along Hollow Way Road (approximately 500 feet north and south of the site) and noted no other additional fence/walls that appeared to be located in the front yard setback and to exceed 4' in height.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - letters that provide additional details about the requests;
 - revised site plans;
 - photos of other fences in the area;
 - a detailed partial site plan;
 - revised elevations; and
 - examples of plant materials to be located near the fence.

GENERAL FACTS (related to the visibility obstruction special exception):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
 The applicant has submitted a site plan and elevation that indicates two 8' high stone columns that would be located in the two 20' visibility triangles at the drive approach into the site from Hollow Way Road. Staff cannot fully determine from the submitted materials whether or not there are landscape materials to be located in these triangles as well.

- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - letters that provide additional details about the requests;
 - revised site plans;
 - photos of other fences in the area;
 - a detailed partial site plan;
 - revised elevations; and
 - examples of plant materials to be located near the fence.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac (A) (Single family district 1 acre)
North: R-1ac (A) (Single family district 1 acre)
South: R-1ac (A) (Single family district 1 acre)
East: R-1ac (A) (Single family district 1 acre)
West: R-1ac (A) (Single family district 1 acre)

Land Use:

The subject site is being developed with a single family home. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

1. BDA 967-290, 9750 Hollow Way Road (the lot immediately east of the subject site)

On September 15, 1997, the Board of Adjustment Panel C granted requests for a special exception to the fence height regulations of 3' and a special exception to the visibility obstruction regulations at drive approaches and at an intersection. The board imposed the following conditions with these requests: compliance with the submitted elevation plan, and the amended site/landscape plan indicating no fence located in the Falls Road/Hollow Way Road visibility triangle is required. (The board noted that this action did not authorize the use of public right-of-way or authorize a license to use the public right-of-way for landscape materials). The case report stated that the requests were made to construct/maintain a 6' high open wrought iron fence with 6.5' high brick columns and a 7' high open wrought

1. BDA 87-112, 5507 Winston Court (the lot immediately southeast of the subject site)

iron pedestrian entry gate, and to maintain landscape materials in triangles.

On January 13, 1987, the Board of Adjustment denied a request for a special exception to the fence height regulations of 4' without prejudice. The case report stated that the request was made to construct a combination wrought iron and brick fence with 8' columns.

Timeline:

- Dec. 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Jan. 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Jan. 19, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the February 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Jan. 19, 2007: The Board Administrator requested that the applicant's representative substantiate in further detail the materials of the proposed fence/wall, and what is proposed to be located in the required visibility triangles.

- Jan. 25, 2007: The applicant's representative met with the Board Administrator about the requests at hand. It was discovered at this meeting that a portion of the existing structure was located in the site's 40' front yard setback along Hollow Way Road. The administrator explained options of adding the variance request to be considered simultaneously with the special exception requests in March, or to keep the special exception requests on the February docket with the variance request to be considered most likely no earlier than April.
- Jan. 29, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).
- Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.
- Feb. 1, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B).
- Feb. 5, 2007 The Development Services Senior Engineer forwarded a review comment sheet marked "Has no objections if certain conditions are met" commenting:
1. Remove the shrubs inside the 20' x 20' visibility triangles on Hollow Way.

STAFF ANALYSIS (related to the fence height special exception):

- A revised scaled site plan has been submitted that documents the location of the proposed fence, columns, and gate relative to their proximity to the property line and pavement line. The revised site plan clearly shows the length of the proposal relative to the entire lot. The proposal is about 150' in length parallel to Hollow Way Road and about 40' in length perpendicular to the street on the south side of the site, and is located approximately on the site's front property line. The revised site plan shows that the fence to exceed 4' in height is limited to the site's Hollow Way front yard setback.
- Revised scaled elevations have been submitted that represent partial fence elevations. These elevations document the heights and materials of the proposal: a 6' high open wrought iron fence and entry gate with 8' high stone columns parallel to Hollow Way Road, and a 6' high chain link fence perpendicular to Hollow Way Road on the south side of the site.

- There is one single family home that would have direct frontage to the proposed fence/wall. (This single family home has an approximately 6' high open wrought iron fence in its front yard setback on Falls Road that appears to have been "special excepted by the board in 1997: BDA967-290. Note that the majority of the length of this fence facing west on Hollow Way Road is located in this site's side yard setback).
- No other additional fence/walls were noted that appeared to be located in the front yard setback and or to exceed 4' in height along Hollow Way Road (approximately 500 feet north and south of the site).
- As of February 5, 2007, one letter had been submitted to staff in opposition to the proposal, and no letters had been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, columns, and entry gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with conditions imposed that the applicant complies with the submitted revised site plan and revised elevations would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

STAFF ANALYSIS (related to the visibility obstruction special exception):

- The Development Services Senior Engineer has commented that he has no objections to the requests if the shrubs inside the 20' x 20' driveway visibility triangles on Hollow Way Road are removed.
- The applicant has the burden of proof in establishing the following:
 - Granting the special exceptions to the visibility obstruction regulations (whereby, according to the submitted site plan and elevation, two 8' high entry columns and possibly landscape materials will be located in the two 20' visibility triangles at the drive approach into the site from Hollow Way Road) will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted revised site plan and elevation, and the condition that all/any landscape materials located in required visibility triangle areas must be maintained outside the area between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle), two 8' high columns would be "excepted" into the two 20' visibility triangles at the drive approach into the site from Hollow Way Road.

If the Board of Adjustment were to grant the request for the fence height special exception (and impose the revised site plan and elevations as a condition to the fence height request) but deny the visibility obstruction special exceptions, staff would note on the fence height-approved stamped site plan and elevations that the applicant must comply with all city-required visibility obstruction regulations.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2007

APPEARING IN FAVOR: Jason Osterberger, 2802 W Carroll Ave #5105, Dallas, TX

APPEARING IN OPPOSITION: Paul Schuster, 9750 Hollow Way Road, Dallas, TX

MOTION #1: **Jefferson**

I move that the Board of Adjustment, in Appeal No. **BDA 067-028**, on application of John Kirtland, represented by Karen Killgo, **grant** the request of this applicant to construct an eight-foot-high fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised scaled site plan and revised scaled elevation is required.
- The fence must be set back 20 feet from the edge of the existing pavement line.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Jefferson

I move that the Board of Adjustment, in Appeal No. **BDA 067-028**, on application of John Kirtland, represented by Karen Killgo, **grant** the request of this applicant to construct portions of a fence in a visibility triangle as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised scaled site plan and revised scaled elevation is required.
- Any landscape materials located in the required visibility triangle areas must be maintained outside the area between two-and-a-half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 0 -

MOTION PASSED: 5- 0 (unanimously)

MOTION: Jefferson

I move to adjourn this meeting.

SECONDED: Griggs

AYES: 5– Richmond, Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 0 -

MOTION PASSED: 5- 0 (Unanimously)

3:08.M. - Board Meeting adjourned for February 13, 2007.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

Note: For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.

